

N.D.A.G. Letter to Lundberg (Sep. 4, 1985)

September 4, 1985

Ms. Jane M. Lundberg
Commissioner
Department of Banking and
Financial Institutions
State Capitol
Bismarck, North Dakota 58505

Dear Commissioner Lundberg:

This letter is in response to Commissioner Marilyn Foss's letter of July 10, 1985, in which she asked whether a state-chartered bank may invest funds in a mutual fund which invests its assets exclusively in securities which are permissible investments for state-chartered banks, without first obtaining approval from the State Banking Board.

As Ms. Foss pointed out in her letter, N.D.C.C. § 6-03-48 authorizes state-chartered banks to invest in securities issued by national mortgage associations. The investment questioned in the letter is a bank's investment in a mutual fund which invests solely in securities issued by national mortgage associations. N.D.C.C. § 6-03-48 does not specifically allow banks to invest in mutual funds even where those funds only invest in permissible investments.

The letter indicates that the Comptroller of the Currency interprets federal law to allow national banks to invest in mutual funds which invest solely in permissible securities. N.D.C.C. § 6-03-38 states:

. . .the state banking board shall have power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this Code. . . .

The Legislature has provided a method for banks to make investments not specifically authorized by law by allowing the State Banking Board to approve the same pursuant to N.D.C.C. § 6-03-38.

For this reason, it is my opinion that banks wishing to invest in mutual funds which invest in permissible securities seek the approval of the State Banking Board for same.

Sincerely,

Nicholas J. Spaeth

pg